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IN THE

Supreme Court of the United States

October Term, 196....

No. 281

FRANK W. WICKER,
Petitioner,

v.

NATIONAL SURETY CORPORATION,
Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit entered in the above case on April 20, 1964.

OPINIONS BELOW

The opinion of the District Court for the Eastern District of Virginia (R. I-2) giving judgment for the plaintiff in the sum of $100,000.00 is unreported. The opinion of the Court of Appeals for the Fourth Circuit (R. 9) reversing the District Court is reported at 330 F.2d 1009, 31 Automobile Cases 2d 290.

JURISDICTION

The judgment of the Court of Appeals for the Fourth Circuit was made and entered on April 20, 1964 (R. 20),

and copy thereof is appended to this petition in the Appendix at pp. 11-20. The jurisdiction of this Court is invoked under 28 USC A1254(1).

QUESTIONS PRESENTED

This is a suit against a garage liability insurer of an automobile dealer which had attempted a sale of an automobile to a prospective purchaser, who while driving the automobile, struck and seriously injured the petitioner. The District Court held that, under the applicable statutes, the facts and the decided state cases, title to the vehicle had not passed to the purchaser, that he was driving with the permission of the owner dealer and that respondent's policy covered the loss. Hence, respondent was liable on petitioner's state-court judgment against the driver to the extent of its contractual limit, $100,000.00. The Court of Appeals reversed, holding that title to the vehicle had passed to the driver and that he was not covered by respondent's policy.

Decided state court cases hold that in order for title of a motor vehicle to pass from one to another there must be strict compliance with the statutory requirements. The statutory requirements are two-fold; *i.e.*, notice by the dealer-seller to the state Division of Motor Vehicles and delivery to the prospective buyer of a duly executed and notarized assignment of the old title certificate. (Appendix p. 21)

Eighty per cent of the title transfers in Virginia each year are handled by dealers (R.p. I-6).

In this case possession of the motor vehicle was given to the driver by the dealer on December 20, 1961. He injured petitioner on December 24, 1961. The dealer executed the assignment of title on the old certificate on December 21, 1961 but never physically delivered the certificate to buyer. It gave no notice of the transfer to the Division of Motor

Vehicles until all title papers were delivered to the Division on December 27, 1961, three days after the injury. The District Court held the delivery of the title papers to the Division on the 27th constituted the notice required by the statutes as well as the first outward evidence of a constructive delivery of the title certificate to the buyer. The Court of Appeals held the dealer was the agent of the buyer for receipt of the delivery of the certificate when it was executed on the 21st but the Court of Appeals completely ignored the statutory requriement of notice of the transfer to the Division of Motor Vehicles. The Court of Appeals sought to give effect to the intent of the parties to the sales transaction rather than to compliance with the statutory requirements passed for the benefit of the public. The questions presented are:

1. Whether, in cases involving about eighty per cent of the automobile title transfers in Virginia, the statutory requirements for transfer may be ignored.

2. Whether the state court decisions that strict statutory compliance must be followed to effect transfer of motor vehicle titles in order to protect the public may be ignored in favor of the intent of the immediate parties to a transfer.

STATE STATUTES INVOLVED

The pertinent portions of Sections 38.1-381, 46.1-87, and 46.1-90 of the Code of Virginia of 1950 are set forth in the Appendix at pp. 20 to 21.

STATEMENT

The findings of fact in this case are related in the District Court's Memorandum Opinion (Appendix pp. 1 to 4).

This suit was brought by Petitioner, a resident of Virginia, to collect a judgment rendered in his favor in the sum of $150,000.00 on May 16, 1962 in the Law and Equity

Court of the City of Richmond, Virginia against one Joseph F. White. Respondent, a non-resident of Virginia, had issued a garage liability policy to Commonwealth Ford, Inc., a new car dealer with a contractual limit therein of $100,000.00 to any one person injured. § 38.1-381 of the Code of Virginia, commonly known as the "omnibus statute," extends the coverage of all policies issued in Virginia to "any other person responsible for the use of or *using the motor vehicle with the consent, expressed or implied, of the named insured* against liability for death or injury sustained * * * ." (Emphasis added)

On December 20, 1961, during the effective period of that liability insurance policy, White sought to trade an old truck for a used station-wagon being offered for sale by Commonwealth Ford. White, who could not read, signed a buyer's order and a credit application. He signed in blank an application for title. His signature to this blank application was acknowledged before a notary public who was an employee of Commonwealth Ford. White took possession of the station-wagon during the evening of the 20th.

White was told by an employee that Commonwealth Ford would send the papers to the Division of Motor Vehicles. This was agreeable to him.

§ 46.1-90 of the Code of Virginia covers the transfer of title or ownership of a motor vehicle by a dealer. First it permits a dealer to take a vehicle in on trade and to hold the old title certificate for resale without getting a new title certificate therefor in the name of the dealer. § 46.1-90 then provides that the dealer "upon transferring his title or interest to another person shall give notice of the transfer to the Division and shall endorse and acknowledge an assignment and warranty of title upon the certificate and deliver it to the person to whom the transfer is made."

It is important to note that § 46.1-87 which covers the

method of transfer of title by one *other than a dealer* contains the identical requirement of delivery to the transferee of a properly assigned certificate of title as does § 46.1-90, but it does *not* impose the duty of giving notice to the Division as is required of a dealer by § 46.1-90.

Commonwealth Ford executed an assignment of the title to the station-wagon and acknowledged it before a notary public, one of its employees, on December 21, 1961. Such assigned certificate of title was never physically delivered to White, the would-be purchaser. No notice of the transfer, or attempted transfer, of title was given the Division of Motor Vehicles by Commonwealth Ford or anyone prior to petitioner's being injured by White on December 24, 1961 while driving the station-wagon, nor after the injury until December 27, 1961 when all the title papers were sent by the dealer to the Division about mid-day. The Division was closed for Christmas from noon on December 22nd through December 26th.

There is no Virginia state court decision interpreting § 46.1-90, the dealer transfer statute, but there are a number of Virginia Supreme Court of Appeals decisions and a number of U. S. District Court decisions interpreting § 46.1-87, the general transfer statute. The Virginia decisions are:

Thomas v. *Mullins*, 153 Va. 383, 149 SE 494 (1929)
Sauls v. *Andrews & Co.*, 167 Va. 407, 175 SE 760 (1934)
Silvey v. *Johnston*, 193 Va. 677, 70 SE2d 280 (1952)
Nationwide Ins. Co. v. *Storm*, 200 Va. 527, 149 SE2d 494 (1959)

The District Court decisions are:

United States v. *One Hudson Hornet*, D.C., 110 F. Supp. 41 (1953)

U. S. F. & G. Corp. v. *Myers Motors, Inc.*, D. C., 143 F. Supp. 96 (1956).

All these cases follow the rules announced in the *Thomas* v. *Mullins* case, *supra*, that "compliance with the law is not a formality which the parties may waive. The general public has an interest in its observance" and "In order to complete the sale upon his part, it is essential that the seller conform to the statutory requirement by delivering to the buyer a proper assignment of title."

The dealer transfer statute, § 46.1-90, not only imposes an additional duty on the dealer of giving notice of the transfer to the Division of Motor Vehicles, but it places that duty first in order ahead of the duty of delivery of a properly assigned certificate of title.

The District Court recognized and attempted to follow the principles announced in the Virginia decisions. It held that there was no actual physical delivery of the certificate to White and no constructive delivery though there might have been if Commonwealth Ford had given the required notice to the Division.

The Court of Appeals in its opinion quotes the requirements of § 46.1-90 and recognizes that the requirements are mandatory (Appendix p. 15) but never again in its opinion mentions the requirement of giving notice to the Division of Motor Vehicles. No notice was given even though the dealer was only about one block from the Division and even though the Division was open for business for a day and a half after the motor vehicle was delivered to White.

REASONS FOR GRANTING THE WRIT

The decision below should be reviewed because it decides an important Virginia state question in a way that is in conflict with the applicable statute of Virginia and in con-

flict with the spirit, tenor, and rationale of previous cases decided by the Virginia Supreme Court of Appeals.

1. § 46.1-90 of the Code of Virginia governs the transfer of titles to automobiles by dealers in Virginia. The District Court found as a matter of fact that "dealers in Virginia transmit about 80 per cent of the title papers received by the Division (of Motor Vehicles)" (Appendix p. 4).

The statute, § 46.1-90, requires that dealers upon transferring title shall give notice to the Virginia Division of Motor Vehicles and deliver a properly executed assignment of title to the buyer. The District Court held that no notice was given by the dealer in the instant case until four days after petitioner was injured, that there was no delivery, actual or constructive of the assigned title to the buyer by the dealer and hence title to the vehicle had not passed. The Circuit Court held that there was an actual delivery by the dealer to itself as the buyer's agent, but it completely ignored the statutory requirement of notice to the Division.

2. The Circuit Court ignored the requirement of notice in spite of its recognition (Appendix p. 15) that "It has been held by Virginia's Supreme Court of Appeals that the requirements of § 46.1-90 are mandatory." The Virginia cases, beginning with the case of *Thomas* v. *Mullins*, *supra* consistently hold that a strict compliance with the statutory requirements is a prerequisite to the transfer or passage of title from one to another. The prior Federal cases have followed that holding. These cases all hold that the intent of the parties is subservient to interest of the public and; regardless of intent, compliance with the statute is mandatory.

> "Compliance with the law is not a formality which the parties may waive. The general public has an interest in its observance." *Thomas* v. *Mullins*, *supra*, p. 390.

The Circuit Court seems to have put the intent of the parties ahead of other considerations, for it said in its opinion. (Appendix p. 17):

> "Here, unlike the situations in the Mullins, Storm and Meyers Motors' cases, at the time the injury was inflicted the assignment of the title had been properly and completely *executed* and the papers were *being held* only for the purpose of filing them in the Division of Motor Vehicles, then closed for the Holidays. Nothing else remained for the seller or purchaser to do." (Emphasis added)

The Circuit Court fails to account for the failure to give notice and for the fact that the Division was open for a day and a half *after* the automobile was delivered to White.

The Circuit Court then concludes:

> "There was no doubt *among the parties* as to the owner of this automobile when it was being operated by White on December 24. *What doubts might be derived from Virginia's statute* were resolved in accordance with *the intention and understanding of the parties* when the seller *held* the properly assigned title certificate for the sole purpose of filing it, and had an unequivocal duty, as the buyer's agent, to do that." (Emphasis added) (Appendix p. 19)

Clearly, the Circuit Court was controlled by its conception of the intent of the parties rather than by the observance of the requirements of the statute and by the Virginia cases holding such to be a mandatory prerequisite to transfer of title.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that this petition for a writ of certiorari should be granted.

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